|  |  |  |
| --- | --- | --- |
|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

|  |  |
| --- | --- |
|  | Public Meeting held March 20, 2014 |
| Commissioners Present: |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Robert F. Powelson, Chairman | |  | |
| John F. Coleman, Jr., Vice Chairman | |  | |
| James H. Cawley | |  | |
| Pamela A. Witmer  Gladys M. Brown |  | |
| Investigation of Practice of Paper Invoice  Charges | Docket No. I-2010-2181481 | |
| Pennsylvania Public Utility Commission  v.  Cavalier Telephone Mid-Atlantic, L.L.C. | Docket No. R-2010-2176403  Docket No. R-2010-2179527 | |
| Petition of Cordia Communications Corp. for Designation as an Eligible Telecommunications Carrier Under Section 214(e) of the Telecommunications Act of 1996 and  47 C.F.R. §§ 54.101, 201-207 | Docket No. P-2008-2014444 | |

**ORDER**

**BY THE COMMISSION:**

The subject of this Order stems from a joint investigation by the Bureau of Fixed Utility Services (FUS),[[1]](#footnote-1) Bureau of Consumer Services (BCS), and Law Bureau (Law) (collectively “Joint Investigators”) into the practice of charging a fee for paper bills. Specifically, the investigation was to address issues that involve “tariff parity,” legality of the application of paper billing fees for customers who receive bundled services, whether the paper billing fee is a price deregulated rate, and the effect of the Electronic Transactions Act (ETA) on the interpretation of Section 1509.

Based on the reasons set forth herein, the Commission will not approve tariff provisions authorizing telecommunications carriers to charge residential or business customers a fee to receive a paper bill. Additionally, the Commission will institute a narrowly focused Notice of Proposed Rulemaking Order within 6 months of the entry date of this Order to implement this decision as a regulation applicable to the entire industry. Finally, the Commission will address outstanding issues affecting carriers that have approved tariff provisions regarding this fee, and carriers charging for a paper bill without establishing this fee in their PA tariffs.

**Background**

This matter came before the Commission when Cordia Communications Corporation (Cordia) filed, on October 1, 2008, a Petition for Designation as an Eligible Telecommunications Carrier (ETC) for applicable federal universal service funding purposes (Petition). The Office of Consumer Advocate (OCA) filed formal comments to Cordia’s Petition, wherein the OCA disclosed that Cordia is charging a fee of $1.25 to customers who elect to receive a paper bill.

In an Opinion and Order entered June 7, 2010, the Commission denied Cordia’s petition without prejudice, directed the draft of a Policy Statement on ETC Standards, and initiated an investigation into the practice of paper invoice charges and whether tariff provisions of certain facility-based and non-facility-based telecommunications carriers for paper billing invoice fees (PBIFs) are inconsistent with the Public Utility Code, Commission billing regulations, and other relevant authority. Pending the results of the investigation, the Commission did not rule on Cordia’s tariff in the June 7, 2010 Opinion and Order.

On May 14, 2010, Cavalier Telephone Mid-Atlantic, LLC (Cavalier) filed with the

Commission revised local tariff pages for its Telephone Tariff Pa. P.U.C. No. 1, seeking to introduce a PBIF of $3.95 for business customers who wish to receive paper invoices rather than electronic invoices (Tariff Supplement 35). On May 26, 2010, Cavalier filed revised intrastate interexchange tariff pages for its Tariff Pa. P.U.C. No. 2, seeking to introduce a PBIF for long-distance business customers who wish to receive paper invoices rather than electronic invoices (Tariff Supplement 3). FUS staff requested that Cavalier withdraw both proposed tariff supplements because of its belief that Cavalier was in violation of the law and regulations.

Cavalier filed a Petition for Review and Answer to a Material Question (Petition for Review) on June 11, 2010. The question presented was: should Cavalier’s proposed Tariff Supplements introducing a Paper Bill Invoice Fee for business customers be permitted to become effective on July 1, 2010. In its Petition, Cavalier asserted that its proposed tariff supplements should be granted because “[e]lectronic invoicing to business customers is clearly not prohibited by the Public Utility Code or the Commission’s regulations” (emphasis in original). Cavalier stated that it believed that the Commission may be violating Pennsylvania’s Electronic Transactions Act (ETA) (73 Pa.C.S.A. §§ 2260.101, *et seq*) by disallowing the proposed tariff. Cavalier further noted that the Commission has allowed other carriers to charge PBIFs and the Commission would be in conflict with and violation of Chapter 30’s directive to ensure competitive telephone service on equal terms if it denied Cavalier’s petitions to charge a PBIF while allowing other companies to charge such a fee.

On June 21, 2010, Cavalier filed a Brief in Support of its Petition for Review, in which it reiterated and expanded upon the arguments made in its Petition for Review and Answer to a Material Question. In its Brief Cavalier also noted that its proposed tariff supplements would apply only to *business* customers, as distinguished from residential customers in the Cordia’s ETC Petition.

In an Order entered July 29, 2010, the Commission, *inter alia,* permitted Cavalier’s proposed tariff supplements to go into effect, subject to the results of a final Commission Order in *Investigation of Practice of Paper Invoice Charges* (*Investigation*) at Docket No. I‑2010-2181481. The Commission also ordered that the *Investigation* include additional issues referenced in the body of the Order. Finally, Cavalier’s Petition for Review was granted in part, and denied in part, consistent with this Order, without prejudice to the right of Cavalier to raise the PBIF issues in the *Investigation* at Docket No. I-2010-2181481.

The Commission followed this with a Notice of Investigation secretarial letter, published August 14, 2010, in the Pennsylvania Bulletin (40 *Pa.B.* 4728). The Notice identified the PBIF issues and sought comment from interested parties. On

September 8, 2010, as part of this *Investigation*,the Commission issued a secretarial letter that enclosed a questionnaire seeking information on paper billing practices of all telecommunication carriers.

**Comments**

The Notice sought comments about billing practices in general. Comments in response to the Notice were due within 20 days of the date of publication in the Pennsylvania Bulletin. Reply comments were due 10 days thereafter. Comments were received from Verizon Companies (Verizon),[[2]](#footnote-2) AT&T,[[3]](#footnote-3) Cavalier, the OCA, the Pennsylvania Utility Law Project (PULP), and the Pennsylvania Telephone Association (PTA). OCA, Cavalier, Verizon, and AT&T also filed reply comments.

1. **Verizon**

Verizon filed comments and reply comments. In its comments, Verizon first states that by offering customers electronic billing instead of paper bills, it is protecting the environment. Verizon’s basic position is that telephone carriers may charge a paper billing invoice fee under the relevant statutes and regulations, and that Chapter 30 precludes the Commission from regulating rates or rate structures, which include fees carriers charge customers who chose to receive a paper bill.

Verizon believes that the Commission should encourage electronic billing and has, in the past, granted waivers to companies to permit electronic billing, allegedly indicating that the Commission must have concluded that paperless billing is in the public interest, and that there are significant environmental benefits and savings for customers.

Verizon contends that while there is no provision in the Public Utility Code or Commission regulations that permit a utility to impose a fee for a paper bill, there is also no provision that prohibits it. Based on the rational that charging for a paper bill for competitive and interexchange services is an issue of rates and rate structures, Verizon maintains that under Chapter 30 the Commission has no authority over rates, terms and conditions for competitive services and interexchange services. 66 Pa. C.S.

§§ 3018(b)(1) and 3019(g).

Additionally, Verizon states that the Commission should not regulate or prohibit PBIFs for noncompetitive retail services because some competitors are free to charge for paper billing if they choose to. Thus, Verizon believes that there should be

parity in regulatory treatment among all carriers, meaning, if any carrier has the ability to charge for a paper bill, the Commission should not prevent other carriers competing for the same class of customers from charging for a bill. According to Verizon, the Commission lacks the statutory authority to regulate the rates or rate structure for competitive service, including bundled services and service to business customers. Verizon asserts further that the Commission lacks authority over the rates, terms, and conditions for interexchange services, and the paper billing fee for interchange services is a price deregulated service.

Moreover, Verizon maintains that Section 1509 of the Public Utility Code must be read in conjunction with the ETA, which provides that “[i]f a law requires a record to be in writing, an electronic record satisfies the law.” 73 Pa. C.S. § 2260.303(c). In Verizon’s reply comments, it contends that customers increasingly expect and demand electronic billing as an option and that carriers should be able to exercise their own discretion on the issue of charging for a paper bill.

Verizon then disagrees in its reply comments with the OCA’s contention that the Public Utility Code prohibits carriers from charging for a paper bill because the utility has an obligation to provide a paper bill for free. According to Verizon, there is no express prohibition and there is no basis to interpret the statute implicitly to impose such a prohibition. Verizon argues that the statute sets forth that a bill must be rendered, but does not require a specific means to do so. Additionally, Verizon disagrees with OCA’s contention that Chapter 30 gives the Commission authority to forbid charging for a paper bill. Instead, Verizon states that the Commission may not fix or prescribe rates or rate structures and a PBIF would constitute a rate.

Verizon contends that PULP’s stated concerns that paper billing charges should not be imposed on low-income customers are not ripe for consideration. Cavalier only proposes to charge a fee to business customers, and to Verizon’s knowledge, there is no carrier proposing to charge a fee to low-income customers. Therefore, Verizon states that the issue need not be addressed.

Finally, Verizon asserts that Cavalier misstates Verizon’s charges because it does not presently charge a paper billing fee to any of its customers, neither residential nor business customers, nor has Verizon attempted to include a paper bill fee in its traditional or informational tariffs for competitive services.

1. **AT&T**

AT&T filed comments and reply comments. AT&T contends that business and residential customers demand electronic statements because they are convenient, reliable, less expensive, and have environmental benefits. AT&T asserts that it does not currently charge for bills except to large business customers; however, the Commission should not foreclose pricing mechanisms that respond to the demands of the market and that encourage customer use of electronic billing.

First, AT&T’s opinion is that fees for papers bills would not be affected by the Commission’s tariff parity regulations since there is nothing explicit or implicit in the regulations that suggest the substantive rates, terms, or conditions under which competitors offer their respective services should be identical. AT&T asserts that Chapter 30’s objective would be undermined if 52 Pa. Code §§ 53.57, *et seq*., were read to require anything more than parity in the process by which tariffs are approved.

With respect to the second paper bill issue, AT&T states that the Commission may not regulate fees for bills, paper, or otherwise, and that there is no legal prohibition against fees that are different among different groups of customers. Accordingly, AT&T finds it appropriate to charge greater costs to customers who impose greater costs. Additionally, AT&T contends that, as a matter of law and public policy, customers who select to receive a paper bill can be appropriately charged because in a competitive marketplace, the decision should be made by the competitors.

Third, AT&T maintains that Section 3018(b)(1) prohibits the Commission from fixing or prescribing rates, tolls, charges, rate structures for interexchange competitive services, or otherwise regulate interchange competitive services. AT&T believes that, by deregulating interexchange services, the Legislature established, as a matter of state policy, that market forces should determine the terms and conditions.

Fourth, AT&T states that the ETA ensures that a record that exists electronically is given the same validity as a paper form, and Section 1509 addresses the timing of the issuance of bills and some of the information that must be included in the bills.

AT&T’s reply comments note that it is in agreement with the statements made by Cavalier, the PTA, and Verizon; however, AT&T disagrees with statements made by OCA and PULP. AT&T reasons that nothing in Section 1509 specifies that bills may only be issued in paper form or prohibits the imposition of a fee for charges unrelated to late payments. According to AT&T, the section simply says that public utilities must bill customers monthly and allow customers a prescribed minimum number of days to make the payment. Furthermore, AT&T states that neither the plain language of 52 Pa. Code § 64.12 nor its history supports the argument that receiving a paper mail is the default way to handle billing. AT&T contends that the growing customer demand for electronic billing undermines the OCA’s statement that mailed paper bills offer superior convenience of ease and predictability.

Next, AT&T responds that the legislature did not provide the Commission with broad authority over billing and payment in Sections 3019 and 3018 since the words billing and payment do not appear in Section 3019(b)(2), thus rejecting OCA’s claim that this section gives the Commission authority over the billing practices.

Lastly, AT&T responds that if a certified lifeline customer’s household does not subscribe to internet access, a waiver of a paper bill fee would be reasonable. AT&T, in responding to PULP’s assertion that fees on paper bills are a threat to low-income customers because they cannot afford it, contends that all telephone customers have alternative sources of voice-grade service. Further, AT&T states that it is unlikely that a fee on a paper bill to a Lifeline customer would materially affect the affordability of the Lifeline service.

1. **Cavalier**

Cavalier also filed comments and reply comments. In its comments, Cavalier addressed the four main issues of this Investigation.

Cavalier states that the Commission’s tariff parity regulations are directly relevant and important to its decision and must be enforced to prevent discrimination and promote competitive telecommunications services on equal terms. Cavalier alleges that because Verizon and PAETEC Communications are charging a PBIF to their business customers, disallowing any local exchange carriers (LECs) serving business customers in Verizon’s service territory from charging a PBIF would violate the Commission’s regulations regarding tariff parity.[[4]](#footnote-4) Cavalier further reports that Chapter 30 supports the idea of allowing PBIFs because “one of the fundamental purposes of Chapter 30 of the Commission’s regulations is to further liberalize and equalize regulatory burdens among telecommunications companies in a competitive environment.”

Second, Cavalier asserts that PBIFs for local and long distance business customers in Pennsylvania are justified by the competitive designation of business services, the absence of regulations limiting or prohibiting such practices for business customers, and the sophistication of business customers. Cavalier adds that a PBIF for business customers, as it proposed, does not affect residential consumer protections in Chapter 64. However, Cavalier still maintains that charging a PBIF to residential customers is consistent with Chapter 64 because Chapter 64 does not explicitly direct companies to mail a paper bill or state that a charge for such service cannot be tariffed. Cavalier urges the Commission to ensure that no interpretation of these regulations should be permitted to interfere with a customer’s decision to select paperless billing.

Third, Cavalier notes that under the Commission’s prior application and implementation of 66 Pa. C.S. § 3018(b)(2), its proposed tariff supplement to establish a PBIF for long-distance business customers is a long distance interexchange carrier (IXC) price deregulated rate and is, therefore, in accordance with 52 Pa. Code § 53.59. Cavalier states that 66 Pa. C.S. § 3018(b)(2) gives IXCs the option to file with the Commission tariffs or price lists that incorporate the rates for their competitive telecommunications services. However, Cavalier elected to file a supplement to its IXC tariff to establish a PBIF. Cavalier urges the Commission to conclude that this tariff supplement is an IXC price deregulated rate and is, therefore, in accordance with 52 Pa. Code § 53.59.

Finally, Cavalier asserts that if the Commission denies LECs or other utilities the ability to provide customers with electronic invoices, the Commission may be violating the ETA by failing to recognize the legality of invoices in electronic form. Cavalier argues that the ETA has a direct and substantial impact on the statutory interpretation of Section 1509 of the Public Utility Code. This statute states that “a record may not be denied legal effect solely because it is in electronic form.” 73 Pa. C.S.A. § 2260.303(a). Cavalier contends that its electronic invoices meet the statute’s definition of “electronic records.” As such, Cavalier avers that if the Commission denies it or other utilities the ability to provide customers with electronic invoices, the Commission may violate the ETA. Cavalier urges the Commission not to deny utilities the opportunity to provide free elective paperless billing programs to residential customers who elect electronic billing.

Cavalier disagrees with OCA on many points. Cavalier disagrees with OCA’s contention that Section 1509 of the Public Utility Code is contrary to charging a PBIF. Cavalier submits that nothing in Section 1509 or any other section of the Public Utility Code prohibits the Commission from approving tariffs containing PBIFs for competitive local and long-distance customers.

Cavalier also disagrees with the OCA regarding tariff parity. While the OCA asserts that the only tariff parity issue is ensuring that no PBIFs are charged, Cavalier submits that the Commission would violate Chapter 30’s policy to promote and encourage competitive services in a non-discriminatory manner if it were to deny Cavalier’s PBIF while allowing those of its competitors, such as PAETEC. Cavalier further submits that disallowing PBIFs for all carriers, while eliminating the tariff parity issue, “would be contrary to the Commission’s policy of promoting competition and allowing for price adjustments for competitive, unregulated, and bundled services.”

Regarding charging a PBIF to customers who received bundled or price unregulated/competitive service, Cavalier disagrees with OCA’s assertions that the cost of providing the bill is already included in the single price and that the distinction between residential and business customers is irrelevant. Cavalier submits that the Commission has limited authority regarding the charging of PBIFs to customers who receive bundled or price deregulated/competitive services. Cavalier further argues that in this context, Cavalier’s PBIF charges for business customers are justified because of “the competitive status of business services, the greater cost and complexity of business invoicing and the fact that business customers possess the sophistication to negotiate and contract for the services such customers need.”

1. **OCA**

In response to the issues identified in the Commission’s Notice published August 14, 2010, the OCA submitted comments and reply comments. The OCA first concludes that to bill the customer a charge for providing the bill itself is unreasonable and contrary to Section 1509. OCA also contends that there is no tariff parity issue other than to ensure that no fee is charged for a paper bill.

In the second issue, the OCA addresses the legality of a paper billing fee if the customer is purchasing a bundle of services or telecommunications services, and whether or not the fact the customer is a residential or business customer makes a difference. The OCA submits that, if an incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC) offers and bills a bundle of services at a single price, then presumably the cost of provisioning that bill is included in the single price. In this situation, there is no separate paper bill fee and the question of the Commission’s authority to review the fee would be moot. Whether the customer is a residential customer or a business customer also would not make a difference in this context.

The third issue framed by the Commission concerns whether the paper bill fee imposed by an IXC is a price deregulated rate and whether Section 3019(b) provides sufficient authority. The OCA submits that Section 1509 imposes the same billing obligation on all telecommunication utilities, without regard to the Commission’s authority to set the rates for the type of telecommunications services included in the bill. According to the OCA, Chapter 30 acknowledges the Commission’s retained authority to regulate “the ordering, installation, suspension, termination and restoration of any telecommunications service” and review Chapter 63 and Chapter 64 regulations.

*See* 66 Pa. C.S. § 3019(b)(2). Noting that even if the IXC services are competitive and not price regulated by the Commission, Section 3018(b)(3) states “[n]othing in this chapter shall be construed to limit the authority of the Commission to regulate the privacy of interexchange service and the ordering, installation, restoration and disconnection of interexchange service to customers.” The OCA submits that the Commission expressly reserved this authority when the Commission updated its regulations governing IXCs. *See* 52 Pa. Code § 63.109.

The OCA submits that the obligation of an IXC or an ILEC providing intrastate toll service to provide a monthly paper bill and the right of a toll service customer to receive that bill and know the amount to pay directly relates to the ordering and disconnection (or avoidance thereof) of service. Whether the charges on the bill are for basic service, toll service or some combination of services is inapposite to the question of whether a paper bill fee should be charged.

The OCA is opposed to the proposition that all or some telecommunications utilities may be allowed to impose a separate paper billing fee. The OCA submits that charging a fee for a paper bill is contrary to the rights established in Section 1509.

The OCA states that Section 1509 imposes the obligation on all energy, water, wastewater and telecommunications utilities, including all varieties of telecommunications utilities certificated by the Commission, to send customers a monthly bill and it establishes the right of the customer to receive that bill. Moreover, the scope of the telecommunications utility’s certificate of public convenience or variety of telecommunications services charged on the bill does not alter this fundamental right.

The OCA believes that Section 1509 and the Commission’s Chapter 64 regulations are addressing paper bills as there was no electronic billing when these provisions were established. The OCA submits that there is no basis to charge a customer for providing a bill since the telecommunications utility cannot provide reasonable and adequate service without issuing the monthly bill. According to the OCA, the Commission’s Chapter 64 regulations are framed with reference to mail service. The OCA submits that the Commission should continue to use delivery of a paper bill by U.S. Mail as the default method for delivery of bills and there should be no charge for such bills. However, the OCA recognizes that utilities may offer, and customers may accept, alternative methods for delivery of the monthly bill, such as in person receipt or electronic billing.

Pursuant to the broad Chapter 30 authority over ordering, billing and payment,

and termination of service issues, the OCA again submits that the Commission can and should deny tariffs that impose a paper bill fee. 66 Pa. C.S. § 3019(b)(2); *see also*

66 Pa. C.S. § 3018(b)(3). In addition, certain Chapter 64 regulations, which address standards for ordering, billing, and suspension of service, direct service by mail or rely on postmarks to determine rights and obligations. *See e.g.* 52 Pa. Code § 64.12. Simply put, the OCA submits that the identity of the telecommunication carrier or regulatory classification of the service has no or very limited impact of the question of whether telecommunications utilities may legally impose a bill fee in general or a paper bill fee in particular.

Next, the OCA commented on the use of electronic billing by telecommunications utilities to transmit the monthly bill required by Section 1509 and the effect of the ETA (73 Pa.C.S. §§ 2260.301 *et seq*.) on Section 1509. According to the OCA, the requirement that the consumer consent to electronic billing is the cornerstone of Pennsylvania’s ETA. While some consumers may appreciate the convenience of electronic billing, the OCA is opposed to any requirement that the consumer accept electronic billing to avoid a paper bill fee. Such a rate structure would penalize consumers who do not have the electronic billing option or do not want to use electronic billing.

The OCA believes that the question is not about Commission acceptance of electronic bills that meet the appropriate standards but whether a fee can be charged for a paper bill. After referring to its comments in the *Rulemaking to Amend the Provisions of 52 Pa. Code, Ch. 56*, Docket No. L-00060182, Proposed Rulemaking Order, Attachment A at 76 (Sept. 26, 2008), where the Commission addressed the importance of electronic billing and has been working on establishing the billing standards for energy, water and wastewater utilities, the OCA submits that the following consumer protections should be established for the offering of electronic billing service by telecommunications carriers to residential customers.

First, the OCA would emphasize that a residential consumer must consent to receipt of electronic bills and that the consent must be voluntary. The OCA explains that, under the ETA, consent is also a critical element, where the “act only applies to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.” 73 Pa. C.S. § 2260.301(b). In addition, the OCA submits that Section 2260.301(c) recognizes that a party who conducts one transaction electronically may refuse to conduct other transactions by electronic means, thus allowing for customers to change their mind and revert back to receiving paper bills. 73 Pa. C.S. § 2260.301(b). According to the OCA, the ETA does not support the imposition of a paper bill fee, but, in fact, supports the opposite conclusion; and does not appear to conflict with Section 1509 or require the Commission to accept electronic billing as a telecommunications utility’s only no-fee billing method.

In its reply comments, the OCA submits that the Commission must regulate how telecommunications companies bill for utility services in order to ensure that consumers receive affordable telecommunications service on terms that are convenient and reasonable for consumers. 66 Pa. C.S. § 3011(2), 3011(8), 1501, 1509. The OCA acknowledges there are few points of agreement between the comments filed by OCA and PULP and those filed by Verizon, AT&T, the PTA and Cavalier – mainly that some customers have the ability to receive invoices electronically over the internet. However, the OCA and PULP caution that electronic mail is not universally available or used by all consumers, although Verizon would have the Commission assume that all customers have a delivery option. The OCA notes that Verizon’s assumption that all customers have internet access and the ability to receive invoices for utility service electronically is strongly contradicted by the comments of PULP (pages 2-7). The OCA argues that Verizon’s comment on page 2 that market forces “will keep both the rates and the terms of any paper billing fees in line with customer preferences” is similarly without foundation.

In contrast, the OCA points out that Cavalier recognizes that if a customer receives a bill electronically, it should be based on the “customer’s affirmative choice, or decision, to select paperless billing as their preferred method of receiving bill.” Cavalier comments at 9. Yet Cavalier still requests that the Commission not interfere with any telecommunications utility’s decision to impose a paper invoice fee, particularly for paper invoices provided to business customers. OCA submits that requiring a consumer to invest in technology and internet service in order to receive a bill for telecommunications service would be unreasonable utility service, in violation of Section 1501 and 1509.

66 Pa. C.S. § 1501, 1509.

The OCA notes that Verizon, AT&T, the PTA, and Cavalier cite to provisions of Chapter 30, which relate to promotion of competition in support of their position. However, the OCA refers to PULP’s comments (page 3) that the Commonwealth’s support for the development of competition is tempered by the concern for the maintenance of “universal telecommunications service at affordable rates.” *See*

66 Pa. C.S. § 3001(1), (2) & (3). The OCA submits that neither Verizon, AT&T, the PTA, nor Cavalier explain how the imposition of additional charges for receipt of bills in paper form promotes affordable, universally available telecommunications service. The OCA emphasizes that Section 1509 clearly vests the Commission with authority over what other components of the total bill may be subject to itemization. According to the OCA, the Commission should not allow telecommunications utilities to impose a separate charge for the provision of a paper bill, when the provision of a bill is an integral part of the telecommunications service provided.

On the issue of tariff parity, the OCA believes there is no tariff parity issue other than to ensure that no fee is charged for a paper bill. The OCA maintains that the Commission should exercise its authority and reject any tariffs that propose a PBIF, whether filed by an ILEC or non-ILEC. The OCA believes that competition on equal terms is promoted if all telecommunications carriers recover their costs of providing the monthly bill required by Section 1509 through charges for telecommunications service.

On the issue of bundled services, the OCA reasons that if the bundle is truly a comprehensive charge for all telecommunications services at a single price then there would not be separate paper billing fee. The OCA reasons that the Commission retains authority over all telecommunications carriers, pursuant to Section 3019(b)(2), to regulate the ordering, installation, suspension, termination and restoration of any telecommunications service. *See Rulemaking Re: Provisions of Basic Services in Bundled Service Package Plans by Local Exchange Carriers*, Docket No. L-00060179, Final Rulemaking Order Upon Reconsideration (Dec. 23, 2009)(Bundled Service Reconsideration Order), pages 14-15.

In addition, the OCA explains that the obligation of an IXC or an ILEC offering intrastate toll service to provide a monthly paper bill and the right of a toll service customer to receive that bill and know the amount to pay, directly relate to the ordering and disconnection (or avoidance thereof) of service, which support the Commission’s authority over the provision of the monthly paper bill to end-user customers of price deregulated intrastate long distance service. 66 Pa. C.S. §§ 3018(b)(3), 3019(b)(2).

The OCA agrees that, if a consumer consents to receive electronically the monthly bill required by Section 1509, then that electronic record is of the same legal effect as if provided in paper form by mail. However, the question for resolution is whether the Commission should allow telecommunications carriers to impose a charge on consumers who receive their monthly bill in paper form. The OCA states that the ETA makes clear that both parties must consent to the conduct of a transaction electronically and if the customer receives a paper bill, then the ETA has no bearing on this transaction.

Finally, the OCA submits that the Commission should reject the positions of Verizon, AT&T, the PTA, and Cavalier that the offering of electronic billing at no charge justifies the imposition of a paper bill fee. While the OCA supports electronic billing, the OCA asserts that it should be offered as a free alternative to receipt of a paper bill by mail.

1. **PULP**

PULP submitted comments pursuant to the Commission’s August 14, 2010 Notice. PULP provides representation, information, assistance, and advice about residential utility and energy matters affecting low-income consumers.

PULP first asserts that low-income consumers can ill afford an additional charge for utility service and are the least likely to avoid the charge for a paper bill because many low-income customers do not have reliable access to the internet and many, particular the elderly, lack the computer literacy necessary to manage their phone service electronically.

PULP explains that Chapter 30 of the Public Utility Code establishes the legislative intent to help low-income customers afford and maintain telecommunications services. 66 Pa. C.S. § 3011. PULP submits that there is a legislative objective of maintaining “universal telecommunications service at affordable rates” and a requirement that telecommunications customers “pay only reasonable charges” for local service.

66 Pa. C.S. § 3011(2), 3011(3).

PULP also maintains that Chapter 64 regulations were developed with the assumption that paper mail is the main or default way that utilities and customers handle billing and payment. According to PULP, “the due date for payment of a monthly bill shall be at least 20 days from the date of mailing by the LEC to the customer,”

52 Pa. Code § 64.12; and “payment shall be deemed to have been made on the date of the postmark.” Pa. Code § 64.12(2)(i).

PULP argues that charging a fee for the receipt of a paper bill would not only change the default, but would essentially add a requirement that customers must pay additional costs to maintain and purchase services and equipment (computers and internet service) to replace what is presently free receipt of mail by the national postal service.

PULP concludes that imposing a paper billing charge will result in a reduction in telephone access for low-income consumers, a result directly counter to the legislative mandates of the General Assembly and the policy goals of the Commission.

1. **Pennsylvania Telephone Association**

In its comments, the PTA submits that it would “be contrary to the spirit” of Chapter 30 to prevent ILECs from charging a PBIF while allowing CLECs to charge a PBIF. The PTA argues that providing tariff parity between CLECs and ILECS is consistent with the legislative intent of Chapter 30. The PTA expressed agreement with Cavalier’s position that prohibiting it from charging a PBIF while allowing its competitors to do so would violate Chapter 30’s policy to promote and encourage the provision of competitive services in a non-discriminatory manner.

Regarding the differentiation of PBIFs for residential and business customers who receive bundled services, the PTA argues that there should be no differentiation between residential and business customers who receive price unregulated/competitive services and those who receive unregulated/noncompetitive services.

The PTA further states that the Commission should not have the ability to regulate PBIFs because such fees are interexchange price deregulated rates. The PTA cites Section 3018 in support of its argument, asserting that PBIFs fall within the category of unregulated items in Section 3018(b) and do not fall within one of the exceptions.

Finally, the PTA argues that the Electronic Transactions Act appears to broaden Section 1509 because electronic invoices would meet the definition of “electronic record” under the Act. PTA asserts that, while there is no provision in the Public Utility Code or regulations that permits a PBIF for the monthly bill required by Section 1509, there is also no express prohibition preventing PBIFs. As such, the PTA argues that the Commission “should acknowledge the legality and commonality of bills in electronic form.”

**Questionnaire**

As noted previously, on September 8, 2010, the Commission issued a secretarial letter wherein it requested that all telecommunications carriers respond to a questionnaire. The questionnaire sought information regarding the companies’ paper billing practices and billing practices in general.

A total of 134 responses were received either electronically or in hard copy form. Of those responses, 24 companies were identified as currently charging a PBIF or statement fee to residential and/or business customers. The fees ranged from $1.95-$3.89 per month for residential customers to $1.95-$30.00 for business customers, depending upon the number of pages of the bill. One company and its subsidiaries responded that a $2.00 fee is charged to the customer only if the customer requests a statement in ***both*** electronic and paper form. One company charges for a paper bill or an emailed pdf of the bill, but if the customer accesses and pays the account online, there is no fee. Two companies charge a recurring “Account Maintenance Fee” if billed by paper, but waive the fee if the bill is paid online. Several of the companies charging a PBIF appear to be charging fees that are not in their PA or FCC tariffs.

The majority of the 134 providers offer electronic billing options as a voluntary alternative to receiving a paper bill. None charge for electronic billing (except the above mentioned pdf), and only four companies offer any type of incentive to the customer to switch from paper billing. The incentives range from entry in a sweepstakes to a designated tree planting to monetary discounts of $5.00 (one time) to $10.00 (monthly).

Only one company currently charging a PBIF provides an exemption for Lifeline and customers with no internet access. In its comments, one company stated, “[i]t is unlikely that a fee on a paper bill issued to a Lifeline customer would materially affect the affordability of Lifeline service.” As of July 1, 2010, the Lifeline discounts ranged from $7.59-$8.25 for Lifeline135[[5]](#footnote-5) to $11.34-$12.00 for Lifeline. The FCC has changed the Lifeline 135 discount to the interim rate $9.25 per month. Using the above range for residential PBIF charged of $1.95-$3.89, the impact on the Lifeline discounts would be substantial--between 16.25% - 51.25% of the discount would be negated by a PBIF.

**Discussion and Response to the Designated Issues**

As the Commission has recognized, the provision of a monthly bill is an element of reasonable utility service and Pennsylvania telecommunications companies must comply with Section 1509 of the Public Utility Code. *Petition of Cordia Communications Corp. for Designation as an Eligible Telecommunications Carrier Under Section 214(e) of the Telecommunications Act of 1996 and 47 C.F.R. §§ 54.101, 201-207*, Docket No. P-2008-2014444, Order entered June 7, 2010). In Cordia’s Petition,

the Commission questioned whether the paper invoice charge tariffed by Cordia is warranted under any circumstances. Petition of *Cordia* at 6. The Commission examined Section 1509 and determined that the “transmittal of, or sending, the monthly bills to its customers appears to be a public utility’s statutory obligation.” *Id*. However, the Commission noted that “sending the monthly bills to the customers’ [sic] computer via the internet was not contemplated by the General Assembly more than 30 years ago.” *Id*.

At the same time, the Commission also recognized that “Chapter 64 regulations contemplate that a monthly bill be mailed to customers.” *Id*.

Given this analysis that Section 1509 neither explicitly permits a company to impose a fee for the monthly bill nor explicitly prohibits the practice of charging a fee for a paper bill, the Commission concluded that an investigation was in order.

In our Notice of Investigation, the Commission requested comments and reply comments from interested parties, to assist in the completion of the joint investigation. The Commission requested comments specifically addressing the following issues:

(a) The impact of the Commission’s “tariff parity” regulations at

52 Pa. Code §§ 53.57, *et seq.*, regarding incumbent local exchange carriers and CLECs on the practice of charging a paper invoice fee.

(b) The differentiation of paper billing fees and the legality of their application for residential and business customers who receive price unregulated/competitive telecommunications services, that is bundled services.

(c) The imposition of paper billing fees to end-user customers of

price deregulated intrastate long distance and the implications of

66 Pa. C.S. § 3019(b) (that is, whether the paper billing fee is an IXC price deregulated rate).

(d) The effect of the Electronic Transactions Act on the statutory interpretation of Section 1509 of the Public Utility Code,

66 Pa. C.S. § 1509.

1. **The impact of the Commission’s “tariff parity” regulations at 52 Pa. Code**

**§§ 53.57, *et seq.*, regarding incumbent local exchange carriers and CLECs on the practice of charging a paper invoice fee.**

Although the Joint Investigators did not believe that the issue of “tariff parity” directly affects this investigation, the Commission has addressed “tariff parity” in its Order regarding the *Verizon Access* proposal to detariff local exchange service for large and enterprise businesses.[[6]](#footnote-6) In this Order, the Commission stated that “[i]n order to maintain tariff parity between ILECs and CLECs, our regulation at 52 Pa. Code § 53.58(a) states in relevant part: ‘ILEC services that have been classified as competitive under the relevant provisions of 66 Pa. C.S. § 3005 (relating to competitive services), may also be offered by CLECs as competitive services *without prior competitive determination and classification by the Commission* subject to this section.’” *See* 52 Pa. Code § 53.58(a) (emphasis added in Commission Order).

The Commission went on to state “[c]onsequently, as the first alternative, we believe that Verizon Access…should have the ability *to offer substantially similar or functionally equivalent services* within the geographic boundaries of Verizon PA’s service territory *on a competitive and price deregulated basis*.” (emphasis added). The Commission concluded that:

Verizon Access should be provided with the following alternative options that it believes are consistent with our existing regulations and the letter and the spirit of TA-96: (1) that the Company be given the

opportunity to maintain informational tariffs and/or price lists with the Commission in accordance with the provisions at 52 Pa. Code § 53.58(d) or (2) the Company withdraw Supplement No. 120 prior to its effective date, *and later file, as the appropriate relief,* *for the competitive classification and detariffing of its local services to large and enterprise customers* in all of its service areas that include those of both Verizon PA and other ILECs within this Commonwealth. (emphasis added).

Verizon Access’s PA PUC Tariff No. 3 which offered *competitive business services to large and enterprise customers* was completely detariffed, effective August 1, 2009.[[7]](#footnote-7)

Therefore, the Commission, in effect, has defined “tariff parity” as follows: if an ILEC’s services have been classified as competitive services, a CLEC can also offer its “substantially similar or functionally equivalent services” without prior competitive determination and classification by the Commission.

However, assuming that a PBIF could be appropriate, based on the information provided by Cavalier regarding its typical business customer, we do not believe that “tariff parity” between the Verizon companies and Cavalier is an issue here, warranting that Cavalier be entitled to the same regulatory treatment as the Verizon companies. Tariff parity between has no relationship or impact on the practice of charging a paper invoice fee because tariff parity should only apply to the parity of *service*, and “the practice of charging a paper invoice fee” is not the act of providing a telecommunications *service*.

In any event, it is important to note that the Verizon companies (whose service territories are also served by Cavalier) competitive business services offered to their business customers are contained in the Informational Tariff for Competitive Services Tariffs Nos. 500 and 11 (Tariff Nos. 500 and 11), respectively. These services are not completely detariffed, and the tariffs are kept on file with the Commission. These tariffs do not contain any provisions that impose a charge for business customers who do not select online billing. The Verizon companies also provide monthly paper bills to their business customers free of charge.

Finally, it is equally important to note that “tariff parity” has no relationship with, and must not affect or reduce an ILEC or CLEC’s statutory obligations to, or otherwise affect customers’ rights under the Public Utility Code.

1. **The differentiation of paper billing fees and the legality of their**

**application for residential and business customers who receive price unregulated/competitive telecommunications services, that is bundled services.**

The Commission concludes that there is no differentiation of paper billing fees and the legality of their application for residential and business customers who receive price regulated telecommunications services and for residential and business customers who receive price unregulated/competitive telecommunications services. We agree with the OCA’s assertion that if the bundled price truly is a comprehensive charge at a single price, the charge for generating a paper bill should be included in this single price.

Furthermore, the Commission has recognized that protected local calling service does not lose its protected status when offered as part of a bundle.[[8]](#footnote-8) Under Section 3019(b)(2) of the Public Utility Code, the Commission has the authority to regulate the ordering, installation, suspension, termination and restoration of any telecommunications service. *Bundled Service Reconsideration Order* at 14-15. The Commission has also stressed that Section 3016(e)(2) (relating to bundled services) does not negate the Commission’s authority under Section 3019(b)(3) to establish requirements deemed necessary and in the public interest by the Commission “to ensure the protection of customers.” *Bundled Service Reconsideration Order* at 14, citing 66 Pa. C.S. § 3019(b)(3). The fact that telecommunications services are bundled does not release the Commission from its obligation to ensure that customers are protected and that they receive a bill in a manner that constitutes reasonable utility service.

1. **The imposition of paper billing fees to end-user customers of price deregulated intrastate long distance and the implications of**

**66 Pa. C.S. § 3018(b) (that is, whether the paper billing fee is an IXC**

**price deregulated rate).**

The Commission agrees with the OCA’s position that the rate regulations under Section 3018(b) do not control the issue of whether a PBIF may be charged to provide customers with the monthly bill required by the Public Utility Code under Section 1509.

Under Chapter 30, the Commission maintains authority over “the ordering, installation, suspension, termination and restoration of any telecommunications service.” 66 Pa. C.S. § 3019(b)(2). We agree with the OCA’s argument that “even if IXC services are competitive and not price regulated by the Commission, Section 3018(b)(3) states ‘[n]othing in this chapter shall be construed to limit the authority of the commission to regulate the privacy of interexchange service and the ordering, installation, restoration and disconnection interexchange service to customer.’” OCA’s Commentsat 8.

All telecommunications utilities, including IXCs and ILECs, have the same billing obligations under Section 1509. These obligations directly relate to the ordering and disconnection of service. What the charges on the bill are for*, i.e.,* basic service, toll service, or a combination, is not relevant to whether PBIFs should be charged.

In addition, as stated previously, providing a monthly bill is not a stand-alone service, but a practice necessary to receive uninterrupted telecommunications service. Therefore, charging a PBIF is not the act of pricing a telecommunications service, let alone an interexchange competitive service within the meaning of 66 Pa. C.S. § 3018(a). Consequently, PBIFs are not rates or charges within the meaning of 66 Pa. C.S.

§ 3018(b). Therefore Section 3018(b) does not apply to prevent the Commission from prohibiting these charges.

The Commission exercises its jurisdiction pursuant to the reasonable service requirement of Section 1501 of the Public Utility Code to address instances of alleged misinformation or a lack of adequate information provided to consumers regarding billing for jurisdictional and non-jurisdictional services. In fact, misrepresentation of telephone rates to customers by a telephone utility has been deemed tantamount to failure to provide “reasonable service” and, therefore, found to be actionable under Section 1501 of the Public Utility Code. *AT&T Communications of Pa. v. Pa. Public Utility Commission*, 568 A.2d 1362 (Pa. Cmwlth. 1990). We conclude that failing to provide customers with an itemized monthly bill, free of charge, constitutes a lack of adequate information and thus unreasonable service.

**D. The effect of the Electronic Transaction Act on the statutory interpretation of Section 1509 of the Code, 66 Pa. C.S. § 1509.**

We conclude that providing customers with a monthly bill by mail is required under the Public Utility Code and the Commission’s Regulations and that such an interpretation does not conflict with the ETA. With regard to this issue, the first question to resolve is whether the Public Utility Code and the Commission’s Regulations require utilities to provide customers with monthly bills by mail without incurring an additional charge. We conclude that they do. The second question is whether such an interpretation violates the ETA. We conclude that it does not.

Under Section 1509 of the Public Utility Code, “[a]ll customers shall be permitted to receive bills monthly and shall be notified of their right thereto.” 66 Pa. C.S. § 1509. This Section imposes upon all utilities the obligation to send customers a monthly bill and establishes the right of customers to receive that bill. Furthermore, the Commission has recognized that providing a monthly bill is an element of reasonable utility service and that Pennsylvania telecommunications carriers must comply with Section 1509 of the Public Utility Code. *See* *Petition of Cordia*; 66 Pa. C.S. § 1509.Although the intent of the statute is to address the transmittal of the utility bill, but not the means of conveyance, the Commission further noted that the use of the internet and electronic billing were not contemplated when Section 1509 was developed. Therefore, Section 1509 contemplates that utilities are required to provide a paper bill by mail. However, even more persuasive, we believe, is that a utility that fails to provide customers with a monthly bill by mail free of charge is not providing reasonable and adequate service as contemplated by Section 1501. 66 Pa. C.S. § 1501. Clearly, charging a customer who does not have internet access and the technological ability to receive an electronic bill for a paper bill is not reasonable and adequate service.

If customers refuse to pay a PBIF and the public utility does not provide its customers with a monthly bill, the customers will not know how much they owe the company, when they have to pay, and, more importantly, what services and corresponding rates they are being billed. A billing statement that contains required and detailed information is an important tool for the customers to fight against telecommunications fraud, such as cramming and slamming. Additionally, a detailed billing statement also helps customers to make informed choices in the competitive

market for their telecommunications service needs.[[9]](#footnote-9) Therefore, it is important for utilities to comply with Sections 1501 and 1509 and provide, through US mail or physical delivery, *all* of its customers with monthly bills.

Regarding the effect of the ETA on the statutory interpretation of Section 1509, we believe that it is questionable whether the ETA applies to the practice of charging a PBIF. The ETA indicates that it applies to “electronic commerce,” “electronic transactions,” and “electronic signatures, records and writings.” We agree with the OCA that the question is not about Commission acceptance of electronic bills, but whether a fee can be charged for a paper bill if a customer refuses or is unable to receive an electronic bill. Since we believe that Section 1509 imposes the obligation to send customers an itemized monthly bill, with a minimum due date, the effect of the ETA has no impact on Section 1509.

A look at the ETA further supports this contention. For example, Section 2260.102(3) (legislative findings) of the ETA states that “the rights of consumers under existing laws should be protected and preserved.” Section 2260.14(d) (scope) states that “a transaction subject to this act is also subject to other applicable substantive law.” The ETA further states that if another law requires a record to be “sent, communicated or transmitted by a specific method,” “the record must be sent, communicated or transmitted by the method specified in the other law.” 2260.304(b). The ETA goes on to state that “[a] requirement under a law other than this act to send, communicate or transmit a record by first class mail, postage prepaid, regular United States mail, may be varied *by agreement to the extent permitted by the other law*.” 22.60.304(d)(2)(emphasis added). Based on the foregoing, we assert that the ETA does not conflict with an interpretation that Section 1509 of the Public Utility Code requires utilities to provide customers with paper bills. Finding otherwise would be contrary to one of the declarations of the ETA, which is to protect the rights of consumers.

Furthermore, even if the ETA did apply to the provision of bills for utility service, the Commission would not be violating the ETA by refusing to approve PBIFs. As stated above, the ETA does not purport to supersede existing laws regarding the specific method of transmitting a record.

In addition, the ETA does not apply unless both parties consent. Section 2260.301(b) states that the “act only applies to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.” 73 Pa. C.S. § 2260.301(b). Where a customer has not consented to receipt of an electronic bill, the ETA does not apply. By requiring a customer to accept electronic billing to avoid a PBIF, the customer is effectively penalized if they do not want to use electronic billing or do not have internet access. Consequently, under these circumstances the customer’s actions cannot be viewed as voluntary.

It is also important to note that the Commission supports and encourages online billing, provided that consumers are protected. See *Rulemaking to Amend the Provisions of 52 Pa. Code, Ch. 56*,Docket No. L-00060182, Proposed Rulemaking Order, Attachment A at 76 (Sept. 26, 2008) (addressing electronic billing standards for energy water and wastewater utilities). The Commission found that, while electronic billing and payment are important options, “consumers must be protected from possible harm so that they reach a level of trust and comfort with these new options.” *Id*. Importantly, the Commission agreed with and incorporated into its proposed regulations OCA’s recommendations that electronic bills should be voluntary and customers should retain the option of continuing to receive a paper bill (among others). *Id*. We conclude that imposing PBIFs would be inconsistent with the Commission’s expressed position of ensuring customer protection in the advent of electronic billing.

**Other Issues**

In addition to the above issues specifically identified, several other important issues arose during the course of the investigation. Each will be discussed in detail below.

1. **Whether business customers should be treated differently than residential customers for the purpose of PBIFs.**

As stated in our Opinion and Order addressing Cordia’s Petition (page 7), no specific provision of the Public Utility Code or Commission’s regulations explicitly prohibit or permit the charging of a PBIF. That being said, a reasonable interpretation of Section 1501 and Section 1509 together leads to the conclusion that PBIFs are not permissible. Electronic invoices could not have been intended as a method of transmittal under Section 1509 and requiring a charge for issuing a monthly bill is not reasonable and adequate service under Section 1501. Therefore, whether a customer is a business or residential customer has little impact on the legality of imposing billing fees. Furthermore, we conclude that small businesses do not necessarily require a lesser degree of oversight than residential customers.

Clearly, when the Commission’s Chapter 64 Standards and Billing Practices for Residential Service became effective in 1985, it was contemplated that the monthly bill was to be mailed to the customer and allowed the customer to mail the payment to the company. Section 64.12 is replete with references to mailing the monthly bill:

* “[t]he due date for payment of a monthly bill shall be at least 20 days from the date of *mailing* by the LEC to the customer;”
* “[d]ate of payment *by mail*;
* “[f]or a remittance *by mail*, one of the following applies”;
* “(i) [p]ayment shall be deemed to have been made on the date of *the postmark*.

53 Pa. Code §64.12 (emphasis added). More importantly, nothing in the

Commission’s regulations provides for charging a PBIF. Therefore, imposing a PBIF would unlawfully discourage customers from utilizing their rights under Chapter 64.

In permitting Cavalier's Paper Invoice Charges to become effective, the Commission stated that “[i]t would also be consistent with our recent observations that service provided to enterprise and large business customers warrants a lesser degree of regulatory oversight because this class has several choices for their telecommunications needs and possesses the sophistication to negotiate and contract for the services such customers need.” *See e.g*., *Petition of AT&T Communications of Pennsylvania, LLC,*

*for a Waiver of the Commission’s Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket

No. P-2009-2137972, *et al*. (May 20, 2010).

Staff was not be able to verify whether Cavalier's services, contained in its local exchange tariff on file with the Commission, offered to its business customers are comparable with AT&T’s de-tariffed services offered to its enterprise and large business customers. However, we believe that Cavalier's small, if not very small, business customers would not warrant “a lesser degree of regulatory oversight” since these small business customers would not possess such “sophistication to negotiate and contract for services.” *Id*.

Moreover, the monthly bills sent to AT&T’s long distance service small business customers and local service small business customers are comprised of approximately eight and eighteen pages, respectively (and AT&T imposes no charge for these bills). Cavalier's paper monthly bill sent to its typical business customer comprises approximately four pages and Cavalier charges $3.95 for this bill.[[10]](#footnote-10) Finally, since tariffs are approved by the Commission have the force and effect of law, this renders “the sophistication to negotiate and contract for services” by Cavalier's business customers inconsequential.

AT&T’s tariffs for services offered to its business customers on file with the Commission do not contain any tariff provisions that impose a separate line item charge to recover costs regarding monthly bills for customers who do not select online billing. AT&T’s tariffs on file with the Commission do not contain any provisions that impose a separate line item charge to recover costs regarding monthly bills. AT&T provides paper monthly bills to its business customers free of charge.

Cavalier contended that “[w]hen the regulation in question [52 Pa. Code §64.12] was enacted, the Commission could have applied it to business customers as well; however, it did not,” and therefore, Cavalier concluded that the Commission’s regulations do not require paper billing for business customers. However, Chapter 64 was promulgated more than 25 years ago and was mostly aimed at residential customers since at that time (as today) the great majority of any public utility’s customers were residential customers. Moreover, the issue of imposing a PBIF for business customers who do not select online billing has never been raised by any public utility, until Cavalier raised it here.

Additionally, because we contend that charging PBIFs is prohibited by the Public Utility Code and regulations for many other reasons, we find that the distinction between business and residential customers has little impact on our findings.

1. **Recovering paper billing invoice costs**

We have identified two issues regarding the recovery by utilities of paper billing invoice fees: (1) whether in fact there are actually unrecovered costs associated with generating a monthly paper bill; and (2) whether a PBIF is the correct mechanism to recover such costs. We conclude that the costs of providing a monthly paper bill are ordinary operating costs that should be included in the service rate, not in a separate line item paper billing fee to customers.

First, we question whether in fact the costs of proving paper billing invoices are costs that are unrecovered by the utility. All ILECs originally operating in Pennsylvania, as well as a great majority of CLECs and IXCs (a total of approximately 600 telecommunications carriers) have never imposed a separate line item charge to recover costs relating to providing a monthly paper bill. Obviously, this is not because the companies have never wanted to recover these costs. The logical explanation is that they have already recovered these costs using traditional cost recovery methodologies, especially the ILECs which have been here for several decades. Therefore, allowing the utility to recover these costs by a separate line item charge not only is inconsistent with the Commission’s long standing determinations/policy and with long standing and well-established practice in the public utility industry in Pennsylvania, but also allows the company to overly or excessively recover these costs. *See* 66 Pa. C.S. § 1308 (discussing procedures for rate changes); *see e.g. Pennsylvania Industrial Energy Coalition v. Pa. Public Utility Commission*, 653 A.2d 1305 (Pa. Cmwlth. 1995) (*aff’d per curiam*, 670 A.2d 1152 (Pa. 1996)(“single-issue ratemaking is prohibited if it impacts on a matter that is normally considered in a base rate case”). In fact, line item charges or surcharges to recover ordinary operating costs are only rate increases in disguise.

If utilities do have unrecovered costs, the cost recovery methodology for the recovery of paper billing invoice costs must be consistent with the Commission’s long standing determinations as well as with well-established practice in the public utility industry in Pennsylvania. Namely, the costs incurred regarding the monthly bill have always been considered normal or ordinary operating costs. As with many other normal or ordinary operating costs, these costs should be recovered by being included or embedded in the rates for services and not imposed as a separate line item charge. The FCC has also adopted this view, concluding in effect that billing is not a separate telecommunications service, but is an integral *part* of the carrier’s telecommunications service. *See* *In the Matter of Truth-in-Billing and Billing Format, 1st Report & Order & Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, adopted April 15, 1999, released May 11, 1999. Moreover, based on the view that billing is a part of providing service, rather than a service in and of itself, we question how a company could reasonably impose separate rates or charges for part of one service. For these reasons, we conclude that a PBIF is not the appropriate mechanism by which utilities should recover any costs associated with generating paper bills.

1. **Whether the Commission would violate Chapter 30 because it has implemented a policy of approving PBIF tariffs.**

Cavalier claimed that, if the Commission disallows its PBIF, the Commission would violate Chapter 30. In support of this claim, Cavalier specifically named two telecommunications carriers (Exhibit D and F of Cavalier's Petition for Review), namely, PAETEC and Verizon Access. *See* Cavalier’s Comments at 4-5. Cavalier claimed that the Commission would be treating it unfairly, in violation of Chapter 30, since it has permitted Verizon Access to charge business customers who do not select online billing. Moreover, while PAETEC’s tariff provision was *inadvertently* approved by the Commission’s staff, Verizon Access’s $15.00 Paper Invoice Charge was not filed with, nor approved by the Commission. Verizon Access’s tariff, which is associated with this charge and which offered competitive business services to large and enterprise customers, was completely detariffed, effective August 1, 2009.[[11]](#footnote-11) Furthermore, residential and small business customers were not impacted by Verizon Access’ complete detariffing and the $15.00 Paper Invoice charge does not apply to invoices relating only to intrastate telecommunications services.[[12]](#footnote-12)

We also found provisions in the tariffs of seven carriers covering eight tariffs

(3 CLEC Local, and 5 IXC toll) that charge customers for not electing electronic billing and were inadvertently approved by the Commission. Therefore, there are approximately a total of ten telecommunications carriers that have tariff provisions charging customers for not selecting online billing. However, it is important to note that the Commission has never *officially and affirmatively* approved any tariff provisions that charge any customers for not selecting online billing. The relevant tariff supplements took effect by operation of law, which does not constitute a determination that the supplements are lawful, just, or reasonable and is without prejudice to any formal complaints that may be filed against the supplements. Therefore, this cannot be construed as the Commission’s policy or a determination regarding this matter.[[13]](#footnote-13) We also found a total of seven carriers (4 CLECS, 1 facilities-based IXC, 2 IXC resellers) that charge for a paper bill for not selecting online billing, but without establishing any tariff provision regarding this charge in their Pennsylvania tariffs on file with the Commission. The Commission will refer these companies to our Bureau of Investigation and Enforcement for whatever further action is deemed warranted based on staff’s review.

1. **The Chapter 30 mandate and impact of PBIFs on vulnerable utility customers, such as the elderly, poor and disabled.**

It is important to consider the effects of PBIFs on the vulnerable residents of this Commonwealth, such as the elderly, poor, and disabled. We conclude that PBIFs will have a greater negative impact on these customers.

We also conclude that approval of PBIFs would undermine the legislative goals of Chapter 30 in that regard. For low-income customers without access to the internet, PBIFs would require payment to obtain the kind of detailed billing information needed to ensure the purchase of affordable service. This ensuing increase in the cost of basic service would have long term impact on their ability to purchase basic service, a decline currently evident in the difference in telephone service (“penetration rates”) subscribership as a function of income. Moreover, the claim that lower-income consumers can simply obtain that information from their at-home residential online service ignores current factual data indicating that lower-income consumers are far less likely to have at home online service compared to the general population.[[14]](#footnote-14) These considerations support our determination that PBIFs are not consistent with the public interest, particularly given the adverse impact to our universal service mandate set out in Chapter 30.

At this time, Pennsylvania still has areas without adequate access to broadband. Pennsylvania has many rural residents who live in areas without broadband penetration. These consumers would have no way of avoiding the PBIF and would, in effect, be incurring a mandatory charge just to receive any monthly bill. A PBIF would have disproportionate negative impact on the Commonwealth’s rural residents.

We note that, even for those customers who may presently have internet access, the imposition of a PBIF puts an additional cost on customers to maintain or replace services and equipment. Consumers who wish to avoid a PBIF would be faced with these new costs to replace or maintain what is now free through the national postal service.

We also note that PULP makes an important point that the PBIFs conflict with Chapter 30’s mandate to help low-income customers afford and maintain telecommunications service and maintain “universal telecommunications service at affordable rates.” PULP Comments at 3; 66 Pa. C.S. § 3011(2)(3)(8). Approving PBIFs that unnecessarily increase costs for low-income customers is contrary to these legislative goals of Chapter 30.

**E. Environmental concerns**

Finally, we note that the parties in favor of PBIFs have raised environmental concerns in support of their positions. While we note the laudable goal of conservation, we do not think that environmental concerns are dispositive of this issue. Companies can, and have, provided online billing without imposing a PBIF on those customers retaining paper billing.

Many companies do offer and invite online billing or paperless billing for purposes, such as environmental concerns, such as “Go Green.” The Commission has supported and encouraged this kind of paperless billing or online billing. In other words, online billing must be offered on a voluntary basis and free of any condition, such as to avoid a charge. In addition, customers should always be able to switch back to the conventional or traditional billing; namely, paper billing, at any time free of any charge.[[15]](#footnote-15)

Some public utilities such as AT&T, Verizon PA, and PP&L do offer online billing without a need for the Commission’s involvement or waiver. However, as stated above, these companies do not violate Section 1509 since their online billing is offered strictly on a voluntary basis, and customers who do not select online billing do not have to pay a charge. Most importantly, the traditional paper bills are always available for their customers at any time and free of charge. In direct contrast to the notion of PBIFs, some companies, such as Verizon PA, PP&L, even offer incentives for customers who select online billing as explained below.

Cavalier submitted, presumably in support of its PBIF of $3.95, that Verizon PA, PP&L, and PECO currently offer and invite paperless or online billing.[[16]](#footnote-16) However, Cavalier did not mention that these companies are offering online billing on a strictly voluntary basis. These companies do not impose any charge for customers who do not select online billing. On the contrary, Verizon PA offers entry in a $10,000 Sweepstake to customers who sign up for paperless billing. PP&L also offers incentives to customers who sign up for billing online. *See* “Connect” inserted in PP&L monthly bill November 2010.

**Conclusion**

The Commission concludes that imposing a separate line item charge to recover costs regarding paper invoice charges for the provision of monthly bills is not consistent with the Public Utility Code, Commission regulations, the Commission’s long standing precedent, and the well-established practices of all public utilities operating in Pennsylvania. By allowing telecommunications carriers to impose a separate line item charge to recover costs regarding monthly bills allows for an excessive recovery of these costs and, thus, is an unjust and unreasonable practice.

As a result, on a going forward basis, the Commission intends to deny any proposed tariff provisions that would charge residential or business customers a fee to

receive a paper bill. In addition, we intend to adopt a notice of proposed rulemaking applicable to the entire industry that would prohibit the charging of a fee for paper bills.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Commission will deny any proposed tariff provisions authorizing telecommunications carriers to charge residential or business customers a fee to receive a paper bill.

2. That the Bureau of Investigation and Enforcement is directed to investigate those carriers that are charging a paper billing fee, both with and without tariff authorization, and take whatever further action may be warranted.

3. That the Law Bureau prepare an order disposing of Cordia’s and Cavalier’s outstanding tariff filings consistent with our resolution of this matter herein.

4. That, within 6 months of the entry date of this Order, the Law Bureau will prepare a narrowly focused Notice of Proposed Rulemaking addressing the paper billing fee issue.

5. That the subject Investigation is hereby marked closed.



**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 20, 2014

ORDER ENTERED: March 20, 2014

1. Now identified as Technical Utility Services (TUS). [↑](#footnote-ref-1)
2. Verizon Companies’ filed on behalf of Verizon Pennsylvania, Inc.; Verizon North Retain Co.; Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance; MCImetro Access Transmission Service, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. [↑](#footnote-ref-2)
3. AT&T filed on behalf of its three Pennsylvania-certificated entities-AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TGG New Jersey Inc. (collectively “AT&T”). [↑](#footnote-ref-3)
4. However, Verizon states that it does not charge a PBIF to any customers, residential or business. [↑](#footnote-ref-4)
5. While Verizon is still honoring Lifeline 100 for currently enrolled customers, the program is no longer supported by the FCC. [↑](#footnote-ref-5)
6. See *MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon Access), Supplement No. 120 to Pa. P.U.C. Tariff No. 3, Proposing to Detariff Local Exchange Services for Large and Enterprise Businesses (MCI Detariffing Order)*, Docket No. R-2008-2054904, Order entered November 26, 2008. [↑](#footnote-ref-6)
7. A current Verizon Access price list was available at http://www.verizonbusiness.com/us/publications/service\_guide/. It should be noted that services offered to residential and small business customers were not impacted by this de-tariffing. It should also be noted that Verizon Access’ $15.00 Paper Invoice Charge was not filed with and approved by the Commission (as claimed by Cavalier). This $15.00 charge does not apply to “invoices solely for intrastate telecommunications services.” See also *Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission’s Regulations at 52 Pa. Code §§ 53.58 and 53.39 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P‑2009‑2082991, Order entered June 3, 2009. [↑](#footnote-ref-7)
8. *Rulemaking Re: Provision of Basic Service in Bundled Service Package Plans by Local Exchange Carriers*, Docket No. L-00060179 (Order Entered March 27, 2009) at 13. *See also Rulemaking Re: Provisions of Basic Services in Bundled Service Package Plans by Local Exchange Carriers*, Docket No. L-00060179, Final Rulemaking Order Upon Reconsideration (Dec. 23, 2009) (*Bundled Service Reconsideration Order)*. [↑](#footnote-ref-8)
9. *See In the Matter of Truth-in-Billing and Billing Format*, 1st Report & Order & Further Notice of Proposed Rulemaking, CC Docket No. 98-170, released May 11, 1999. *See also* §1509, quoted in part: “[a]ll bills shall be itemized to separately show amounts for basic service, Federal excise taxes (omission) or such other similar components of the total bill as the commission may order.” *See also* 52 Pa. Code §§64.14 (required billing information) and 64.23 (cramming and slamming). [↑](#footnote-ref-9)
10. *See* Attachment C of Cavalier Telephone Mid-Atlantic’s responses to our Questionnaire. [↑](#footnote-ref-10)
11. *See* *MCI Detariffing Order*, Docket No. R-2008-2054904, Order entered November 26, 2008. *See* *also Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission’s Regulations at 52 Pa. Code §§ 53.58 and 53.39 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P‑2009‑2082991, Order entered June 3, 2009. [↑](#footnote-ref-11)
12. *See* this charge at http://www.verizonbusiness.com/us/publications/service\_guide/. [↑](#footnote-ref-12)
13. Of approximately 620 telecommunications carriers (37 ILECs, 169 CLECS, 72 IXCs (facilities-based), and 342 IXCs (resellers)), only 10 have tariff provisions that were inadvertently approved. [↑](#footnote-ref-13)
14. According to InternetforEveryone.org, a national initiative of public interest, civic, and industry groups that are working to bring affordable internet to everyone in America, only 35 percent of homes with less than $50,000 in annual income have broadband, while 76 percent of homes earning more than $50,000 per year are connected, <http://www.internetforeveryone.org> (last visited December 17, 2010). [↑](#footnote-ref-14)
15. See *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations; Blanket Waiver of 52 Pa. Code § 56.21 Relating to Physical Delivery of a Bill*, Docket No. L-00060182, Order entered September 2, 2009. *See also* 73 Pa. C.S. § 2260.301(c) (ETA), which recognizes that a party who conducts one transaction electronically may refuse to conduct other transactions by electronic means. [↑](#footnote-ref-15)
16. *See* Exhibits C, E, F, and G attached to Comments of Cavalier Telephone Mid-Atlantic, LLC

    dated September 3, 2010 regarding *Investigation Into Practice of Paper Invoice Charges*,

    Docket No. I-2001-2181481. [↑](#footnote-ref-16)